No. 86-487

Supreme Court, U.S.
FILED
NOV 6 1986
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., and ROBERT M. KOLACZYNSKI,

Petitioners,

—v.—

ESTELLE JACOBSON and CYNTHIA CARSON,

Respondents.

SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Of Counsel:

Marten R. Jenkins, Esq.
Richard C. Lane, Esq.
CAMPBELL, SHERRARD & BURKE, P.C.
2330 Pittsburgh National Bldg.
Pittsburgh, Pennsylvania 15222
(412) 261-2712

Foster S. Goldman, Jr.
BERKMAN RUSLANDER POHL LIEBER & ENGEL
One Oxford Center
Pittsburgh, Pennsylvania 15219
(412) 392-2080

James B. Weidner
(*Counsel of Record*)
Mark Holland
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
(212) 878-8000

Attorneys for Petitioners

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Merrill Lynch supplements its petition for a writ of certiorari to bring to the Court's attention a recent decision of the Court of Appeals for the Fifth Circuit. *Mayaja, Inc.* v. *Bodkin*, No. 85-2762 (5th Cir. Oct. 24, 1986). That decision, which concerns the arbitrability of RICO claims, conflicts directly with the decision of the Third Circuit in this case.

In the opinion below the Third Circuit prohibited arbitration of RICO claims predicated upon alleged violations of the Securities Exchange Act of 1934. (*See* Merrill Lynch petition, Point III). In the *Mayaja* case, the Fifth Circuit expressly "decline[d] to follow the reasoning of the Third Circuit" and held that all RICO claims, including those based on the 1934 Act, are arbitrable—thereby "further adding to the split already present among the circuits." (Slip op. at 13, 14 n.6).

The arbitrability of RICO claims is an issue of national import and of particular significance to the securities industry. (*See* Merrill Lynch petition, Point III). The conflict created between the Third and Fifth Circuits underscores the need for the Court to resolve this issue now.

Dated: November 6, 1986
New York, New York

Respectfully submitted,

James B. Weidner
(*Counsel of Record*)
Mark Holland
ROGERS & WELLS
200 Park Avenue
New York, New York 10166
(212) 878-8000

Attorneys for Petitioners

Of Counsel:

Marten R. Jenkins, Esq.
Richard C. Lane, Esq.
CAMPBELL, SHERRARD
& BURKE, P.C.
2330 Pittsburgh National Bldg.
Pittsburgh, Pennsylvania 15222
(412) 261-2712

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BERKMAN RUSLANDER POHL
LIEBER & ENGEL
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Pittsburgh, Pennsylvania 15219
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